

Section 390 Categorical Exclusion Reform

Section 390 Categorical Exclusions

- Section 390 of the Energy Policy Act established five statutory CXs that apply only to oil & gas exploration and development.
- Section 390 CXs are outlined in Appendix 2 of the BLM NEPA Handbook.
- New Policy Issued in IM:
 - Amended instructions for CX2 & CX3.
 - Review of extraordinary circumstances.
 - Conformance with the approved LUP.

Amended Instructions for CX2 & CX3

CX2: *Drilling an oil and gas well at a location or well pad site at which drilling has occurred within five years prior to the date of spudding the well.*

Change May only be used if the specific location and/or well pad site for the proposed drilling was adequately analyzed in an existing activity-level or project-specific EIS or EA.

CX3: *Drilling an oil or gas well within a developed field for which an approved land use plan or any environmental document prepared pursuant to NEPA analyzed drilling as a reasonably foreseeable activity, so long as such plan or document was approved within five years prior to the date of spudding the well.*

Change May only be used if the developed field in which the proposed drilling will take place was adequately analyzed in an existing activity-level or project-specific EIS or EA (not solely in an approved RMP/EIS).

Extraordinary Circumstances

- Conduct a review for extraordinary circumstances when considering use of any of the Section 390 CXs.
- If extraordinary circumstances exist in relation to the action being considered, then the BLM must prepare alternative NEPA documentation.
- Update Section 390 CX documentation forms to include a discussion of extraordinary circumstances.

“Extraordinary circumstances” are circumstances in which actions that are otherwise categorically excluded from the requirements under NEPA to prepare an EA or EIS may have a significant environmental effect and require additional analysis and action. The DOI’s list of extraordinary circumstances can be found at 43 CFR 46.215 and Appendix 5 of the BLM NEPA Handbook.

Conformance with Approved LUP

- All oil and gas development actions approved through the use of a Section 390 CX must comply with the approved land use plan and be within the range of environmental effects analyzed in the land use plan and its associated NEPA documentation.
- Update Section 390 CX documentation forms to include a discussion of land use plan conformance.

Alternative NEPA Compliance

- Make the best use of existing NEPA analyses for assessing impacts of a proposed action and alternatives.
 - Determination of NEPA Adequacy - A DNA is used to confirm that a proposed action is adequately analyzed in existing EAs or EISs.
 - Tiering - An EA may be prepared, and a FONSI reached, for a proposed action with significant effects, if the EA is tiered to a broader EIS that fully analyzed those significant effects.